

AMENDED IN SENATE AUGUST 24, 2012

AMENDED IN SENATE JUNE 27, 2012

AMENDED IN ASSEMBLY MAY 2, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 542

Introduced by Assembly Member Allen

February 16, 2011

An act to amend Section ~~65583.2~~ 65583 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 542, as amended, Allen. Land use: housing element: ~~regional housing need.~~

The Planning and Zoning Law requires a city or county to prepare and adopt a comprehensive, long-term general plan, and requires the general plan to include specified, mandatory elements, including a housing element. That law requires the housing element, in turn, to contain, among other items, ~~an assessment of housing needs and an inventory of resources and constraints relevant to the meeting of those needs. That law requires that assessment and inventory, in turn, to contain an inventory of land suitable for residential development~~ *identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.*

~~That law requires a city or county to determine whether each site in the inventory of land suitable for residential development can accommodate some portion of the city's or county's share of the regional~~

~~housing need by income level, as specified, and the number of housing units that can be accommodated on each site. That law requires a city or county to prepare an analysis of how the adopted densities accommodate the regional housing need for lower income households in accordance with certain requirements, unless the adopted density is deemed to be appropriate to accommodate housing for lower income households.~~

~~This bill would modify the requirements that a city or county must meet in preparing the analysis demonstrating how the adopted densities accommodate the regional housing need for lower income households, as specified *revise references to redevelopment agencies within these provisions to instead be to successor housing agencies.*~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65583 of the Government Code is
2 amended to read:
3 65583. The housing element shall consist of an identification
4 and analysis of existing and projected housing needs and a
5 statement of goals, policies, quantified objectives, financial
6 resources, and scheduled programs for the preservation,
7 improvement, and development of housing. The housing element
8 shall identify adequate sites for housing, including rental housing,
9 factory-built housing, mobilehomes, and emergency shelters, and
10 shall make adequate provision for the existing and projected needs
11 of all economic segments of the community. The element shall
12 contain all of the following:
13 (a) An assessment of housing needs and an inventory of
14 resources and constraints relevant to the meeting of these needs.
15 The assessment and inventory shall include all of the following:
16 (1) An analysis of population and employment trends and
17 documentation of projections and a quantification of the locality's
18 existing and projected housing needs for all income levels,
19 including extremely low income households, as defined in
20 subdivision (b) of Section 50105 and Section 50106 of the Health
21 and Safety Code. These existing and projected needs shall include
22 the locality's share of the regional housing need in accordance
23 with Section 65584. Local agencies shall calculate the subset of

1 very low income households allotted under Section 65584 that
2 qualify as extremely low income households. The local agency
3 may either use available census data to calculate the percentage
4 of very low income households that qualify as extremely low
5 income households or presume that 50 percent of the very low
6 income households qualify as extremely low income households.
7 The number of extremely low income households and very low
8 income households shall equal the jurisdiction's allocation of very
9 low income households pursuant to Section 65584.

10 (2) An analysis and documentation of household characteristics,
11 including level of payment compared to ability to pay, housing
12 characteristics, including overcrowding, and housing stock
13 condition.

14 (3) An inventory of land suitable for residential development,
15 including vacant sites and sites having potential for redevelopment,
16 and an analysis of the relationship of zoning and public facilities
17 and services to these sites.

18 (4) (A) The identification of a zone or zones where emergency
19 shelters are allowed as a permitted use without a conditional use
20 or other discretionary permit. The identified zone or zones shall
21 include sufficient capacity to accommodate the need for emergency
22 shelter identified in paragraph (7), except that each local
23 government shall identify a zone or zones that can accommodate
24 at least one year-round emergency shelter. If the local government
25 cannot identify a zone or zones with sufficient capacity, the local
26 government shall include a program to amend its zoning ordinance
27 to meet the requirements of this paragraph within one year of the
28 adoption of the housing element. The local government may
29 identify additional zones where emergency shelters are permitted
30 with a conditional use permit. The local government shall also
31 demonstrate that existing or proposed permit processing,
32 development, and management standards are objective and
33 encourage and facilitate the development of, or conversion to,
34 emergency shelters. Emergency shelters may only be subject to
35 those development and management standards that apply to
36 residential or commercial development within the same zone except
37 that a local government may apply written, objective standards
38 that include all of the following:

39 (i) The maximum number of beds or persons permitted to be
40 served nightly by the facility.

- 1 (ii) Off-street parking based upon demonstrated need, provided
2 that the standards do not require more parking for emergency
3 shelters than for other residential or commercial uses within the
4 same zone.
- 5 (iii) The size and location of exterior and interior onsite waiting
6 and client intake areas.
- 7 (iv) The provision of onsite management.
- 8 (v) The proximity to other emergency shelters, provided that
9 emergency shelters are not required to be more than 300 feet apart.
- 10 (vi) The length of stay.
- 11 (vii) Lighting.
- 12 (viii) Security during hours that the emergency shelter is in
13 operation.
- 14 (B) The permit processing, development, and management
15 standards applied under this paragraph shall not be deemed to be
16 discretionary acts within the meaning of the California
17 Environmental Quality Act (Division 13 (commencing with Section
18 21000) of the Public Resources Code).
- 19 (C) A local government that can demonstrate to the satisfaction
20 of the department the existence of one or more emergency shelters
21 either within its jurisdiction or pursuant to a multijurisdictional
22 agreement that can accommodate that jurisdiction's need for
23 emergency shelter identified in paragraph (7) may comply with
24 the zoning requirements of subparagraph (A) by identifying a zone
25 or zones where new emergency shelters are allowed with a
26 conditional use permit.
- 27 (D) A local government with an existing ordinance or ordinances
28 that comply with this paragraph shall not be required to take
29 additional action to identify zones for emergency shelters. The
30 housing element must only describe how existing ordinances,
31 policies, and standards are consistent with the requirements of this
32 paragraph.
- 33 (5) An analysis of potential and actual governmental constraints
34 upon the maintenance, improvement, or development of housing
35 for all income levels, including the types of housing identified in
36 paragraph (1) of subdivision (c), and for persons with disabilities
37 as identified in the analysis pursuant to paragraph (7), including
38 land use controls, building codes and their enforcement, site
39 improvements, fees and other exactions required of developers,
40 and local processing and permit procedures. The analysis shall

1 also demonstrate local efforts to remove governmental constraints
2 that hinder the locality from meeting its share of the regional
3 housing need in accordance with Section 65584 and from meeting
4 the need for housing for persons with disabilities, supportive
5 housing, transitional housing, and emergency shelters identified
6 pursuant to paragraph (7). Transitional housing and supportive
7 housing shall be considered a residential use of property, and shall
8 be subject only to those restrictions that apply to other residential
9 dwellings of the same type in the same zone.

10 (6) An analysis of potential and actual nongovernmental
11 constraints upon the maintenance, improvement, or development
12 of housing for all income levels, including the availability of
13 financing, the price of land, and the cost of construction.

14 (7) An analysis of any special housing needs, such as those of
15 the elderly; persons with disabilities, including a developmental
16 disability, as defined in Section 4512 of the Welfare and
17 Institutions Code; large families; farmworkers; families with female
18 heads of households; and families and persons in need of
19 emergency shelter. The need for emergency shelter shall be
20 assessed based on annual and seasonal need. The need for
21 emergency shelter may be reduced by the number of supportive
22 housing units that are identified in an adopted 10-year plan to end
23 chronic homelessness and that are either vacant or for which
24 funding has been identified to allow construction during the
25 planning period.

26 (8) An analysis of opportunities for energy conservation with
27 respect to residential development. Cities and counties are
28 encouraged to include weatherization and energy efficiency
29 improvements as part of publicly subsidized housing rehabilitation
30 projects. This may include energy efficiency measures that
31 encompass the building envelope, its heating and cooling systems,
32 and its electrical system.

33 (9) An analysis of existing assisted housing developments that
34 are eligible to change from low-income housing uses during the
35 next 10 years due to termination of subsidy contracts, mortgage
36 prepayment, or expiration of restrictions on use. "Assisted housing
37 developments," for the purpose of this section, shall mean
38 multifamily rental housing that receives governmental assistance
39 under federal programs listed in subdivision (a) of Section
40 65863.10, state and local multifamily revenue bond programs,

1 local redevelopment *or housing successor agency* programs, the
2 federal Community Development Block Grant Program, or local
3 in-lieu fees. “Assisted housing developments” shall also include
4 multifamily rental units that were developed pursuant to a local
5 inclusionary housing program or used to qualify for a density bonus
6 pursuant to Section 65916.

7 (A) The analysis shall include a listing of each development by
8 project name and address, the type of governmental assistance
9 received, the earliest possible date of change from low-income
10 use, and the total number of elderly and nonelderly units that could
11 be lost from the locality’s low-income housing stock in each year
12 during the 10-year period. For purposes of state and federally
13 funded projects, the analysis required by this subparagraph need
14 only contain information available on a statewide basis.

15 (B) The analysis shall estimate the total cost of producing new
16 rental housing that is comparable in size and rent levels, to replace
17 the units that could change from low-income use, and an estimated
18 cost of preserving the assisted housing developments. This cost
19 analysis for replacement housing may be done aggregately for
20 each five-year period and does not have to contain a
21 project-by-project cost estimate.

22 (C) The analysis shall identify public and private nonprofit
23 corporations known to the local government which have legal and
24 managerial capacity to acquire and manage these housing
25 developments.

26 (D) The analysis shall identify and consider the use of all federal,
27 state, and local financing and subsidy programs which can be used
28 to preserve, for lower income households, the assisted housing
29 developments, identified in this paragraph, including, but not
30 limited to, federal Community Development Block Grant Program
31 funds, ~~tax increment funds received by a redevelopment agency~~
32 *of the community funding available to a housing successor agency,*
33 *as established pursuant to Section 34176 of the Health and Safety*
34 *Code,* and administrative fees received by a housing authority
35 operating within the community. In considering the use of these
36 financing and subsidy programs, the analysis shall identify the
37 amounts of funds under each available program which have not
38 been legally obligated for other purposes and which could be
39 available for use in preserving assisted housing developments.

1 (b) (1) A statement of the community's goals, quantified
2 objectives, and policies relative to the maintenance, preservation,
3 improvement, and development of housing.

4 (2) It is recognized that the total housing needs identified
5 pursuant to subdivision (a) may exceed available resources and
6 the community's ability to satisfy this need within the content of
7 the general plan requirements outlined in Article 5 (commencing
8 with Section 65300). Under these circumstances, the quantified
9 objectives need not be identical to the total housing needs. The
10 quantified objectives shall establish the maximum number of
11 housing units by income category, including extremely low income,
12 that can be constructed, rehabilitated, and conserved over a
13 five-year time period.

14 (c) A program which sets forth a schedule of actions during the
15 planning period, each with a timeline for implementation, which
16 may recognize that certain programs are ongoing, such that there
17 will be beneficial impacts of the programs within the planning
18 period, that the local government is undertaking or intends to
19 undertake to implement the policies and achieve the goals and
20 objectives of the housing element through the administration of
21 land use and development controls, the provision of regulatory
22 concessions and incentives, the utilization of appropriate federal
23 and state financing and subsidy programs when available, and the
24 utilization of moneys in a low- and moderate-income housing fund
25 ~~of an agency if the locality has established a redevelopment project~~
26 ~~area pursuant to the Community Redevelopment Law (Division~~
27 ~~24 (commencing with Section 33000) of the Health and Safety~~
28 ~~Code) a housing successor agency, as established pursuant to~~
29 ~~Section 34176 of the Health and Safety Code.~~ In order to make
30 adequate provision for the housing needs of all economic segments
31 of the community, the program shall do all of the following:

32 (1) Identify actions that will be taken to make sites available
33 during the planning period with appropriate zoning and
34 development standards and with services and facilities to
35 accommodate that portion of the city's or county's share of the
36 regional housing need for each income level that could not be
37 accommodated on sites identified in the inventory completed
38 pursuant to paragraph (3) of subdivision (a) without rezoning, and
39 to comply with the requirements of Section 65584.09. Sites shall
40 be identified as needed to facilitate and encourage the development

1 of a variety of types of housing for all income levels, including
2 multifamily rental housing, factory-built housing, mobilehomes,
3 housing for agricultural employees, supportive housing,
4 single-room occupancy units, emergency shelters, and transitional
5 housing.

6 (A) Where the inventory of sites, pursuant to paragraph (3) of
7 subdivision (a), does not identify adequate sites to accommodate
8 the need for groups of all household income levels pursuant to
9 Section 65584, rezoning of those sites, including adoption of
10 minimum density and development standards, for jurisdictions
11 with an eight-year housing element planning period pursuant to
12 Section 65588, shall be completed no later than three years after
13 either the date the housing element is adopted pursuant to
14 subdivision (f) of Section 65585 or the date that is 90 days after
15 receipt of comments from the department pursuant to subdivision
16 (b) of Section 65585, whichever is earlier, unless the deadline is
17 extended pursuant to subdivision (f). Notwithstanding the
18 foregoing, for a local government that fails to adopt a housing
19 element within 120 days of the statutory deadline in Section 65588
20 for adoption of the housing element, rezoning of those sites,
21 including adoption of minimum density and development standards,
22 shall be completed no later than three years and 120 days from the
23 statutory deadline in Section 65588 for adoption of the housing
24 element.

25 (B) Where the inventory of sites, pursuant to paragraph (3) of
26 subdivision (a), does not identify adequate sites to accommodate
27 the need for groups of all household income levels pursuant to
28 Section 65584, the program shall identify sites that can be
29 developed for housing within the planning period pursuant to
30 subdivision (h) of Section 65583.2. The identification of sites shall
31 include all components specified in subdivision (b) of Section
32 65583.2.

33 (C) Where the inventory of sites pursuant to paragraph (3) of
34 subdivision (a) does not identify adequate sites to accommodate
35 the need for farmworker housing, the program shall provide for
36 sufficient sites to meet the need with zoning that permits
37 farmworker housing use by right, including density and
38 development standards that could accommodate and facilitate the
39 feasibility of the development of farmworker housing for low- and
40 very low income households.

1 (2) Assist in the development of adequate housing to meet the
2 needs of extremely low, very low, low-, and moderate-income
3 households.

4 (3) Address and, where appropriate and legally possible, remove
5 governmental constraints to the maintenance, improvement, and
6 development of housing, including housing for all income levels
7 and housing for persons with disabilities. The program shall remove
8 constraints to, and provide reasonable accommodations for housing
9 designed for, intended for occupancy by, or with supportive
10 services for, persons with disabilities.

11 (4) Conserve and improve the condition of the existing
12 affordable housing stock, which may include addressing ways to
13 mitigate the loss of dwelling units demolished by public or private
14 action.

15 (5) Promote housing opportunities for all persons regardless of
16 race, religion, sex, marital status, ancestry, national origin, color,
17 familial status, or disability.

18 (6) Preserve for lower income households the assisted housing
19 developments identified pursuant to paragraph (9) of subdivision
20 (a). The program for preservation of the assisted housing
21 developments shall utilize, to the extent necessary, all available
22 federal, state, and local financing and subsidy programs identified
23 in paragraph (9) of subdivision (a), except where a community has
24 other urgent needs for which alternative funding sources are not
25 available. The program may include strategies that involve local
26 regulation and technical assistance.

27 (7) Include an identification of the agencies and officials
28 responsible for the implementation of the various actions and the
29 means by which consistency will be achieved with other general
30 plan elements and community goals.

31 (8) Include a diligent effort by the local government to achieve
32 public participation of all economic segments of the community
33 in the development of the housing element, and the program shall
34 describe this effort.

35 (d) (1) A local government may satisfy all or part of its
36 requirement to identify a zone or zones suitable for the
37 development of emergency shelters pursuant to paragraph (4) of
38 subdivision (a) by adopting and implementing a multijurisdictional
39 agreement, with a maximum of two other adjacent communities,
40 that requires the participating jurisdictions to develop at least one

1 year-round emergency shelter within two years of the beginning
2 of the planning period.

3 (2) The agreement shall allocate a portion of the new shelter
4 capacity to each jurisdiction as credit towards its emergency shelter
5 need, and each jurisdiction shall describe how the capacity was
6 allocated as part of its housing element.

7 (3) Each member jurisdiction of a multijurisdictional agreement
8 shall describe in its housing element all of the following:

9 (A) How the joint facility will meet the jurisdiction’s emergency
10 shelter need.

11 (B) The jurisdiction’s contribution to the facility for both the
12 development and ongoing operation and management of the
13 facility.

14 (C) The amount and source of the funding that the jurisdiction
15 contributes to the facility.

16 (4) The aggregate capacity claimed by the participating
17 jurisdictions in their housing elements shall not exceed the actual
18 capacity of the shelter.

19 (e) Except as otherwise provided in this article, amendments to
20 this article that alter the required content of a housing element
21 shall apply to both of the following:

22 (1) A housing element or housing element amendment prepared
23 pursuant to subdivision (e) of Section 65588 or Section 65584.02,
24 when a city, county, or city and county submits a draft to the
25 department for review pursuant to Section 65585 more than 90
26 days after the effective date of the amendment to this section.

27 (2) Any housing element or housing element amendment
28 prepared pursuant to subdivision (e) of Section 65588 or Section
29 65584.02, when the city, county, or city and county fails to submit
30 the first draft to the department before the due date specified in
31 Section 65588 or 65584.02.

32 (f) The deadline for completing required rezoning pursuant to
33 subparagraph (A) of paragraph (1) of subdivision (c) shall be
34 extended by one year if the local government has completed the
35 rezoning at densities sufficient to accommodate at least 75 percent
36 of the units for low- and very low income households and if the
37 legislative body at the conclusion of a public hearing determines,
38 based upon substantial evidence, that any of the following
39 circumstances exist:

1 (1) The local government has been unable to complete the
2 rezoning because of the action or inaction beyond the control of
3 the local government of any other state, federal, or local agency.

4 (2) The local government is unable to complete the rezoning
5 because of infrastructure deficiencies due to fiscal or regulatory
6 constraints.

7 (3) The local government must undertake a major revision to
8 its general plan in order to accommodate the housing-related
9 policies of a sustainable communities strategy or an alternative
10 planning strategy adopted pursuant to Section 65080.

11 The resolution and the findings shall be transmitted to the
12 department together with a detailed budget and schedule for
13 preparation and adoption of the required rezonings, including plans
14 for citizen participation and expected interim action. The schedule
15 shall provide for adoption of the required rezoning within one year
16 of the adoption of the resolution.

17 (g) (1) If a local government fails to complete the rezoning by
18 the deadline provided in subparagraph (A) of paragraph (1) of
19 subdivision (c), as it may be extended pursuant to subdivision (f),
20 except as provided in paragraph (2), a local government may not
21 disapprove a housing development project, nor require a
22 conditional use permit, planned unit development permit, or other
23 locally imposed discretionary permit, or impose a condition that
24 would render the project infeasible, if the housing development
25 project (A) is proposed to be located on a site required to be
26 rezoned pursuant to the program action required by that
27 subparagraph and (B) complies with applicable, objective general
28 plan and zoning standards and criteria, including design review
29 standards, described in the program action required by that
30 subparagraph. Any subdivision of sites shall be subject to the
31 Subdivision Map Act (Division 2 (commencing with Section
32 66410)). Design review shall not constitute a “project” for purposes
33 of Division 13 (commencing with Section 21000) of the Public
34 Resources Code.

35 (2) A local government may disapprove a housing development
36 described in paragraph (1) if it makes written findings supported
37 by substantial evidence on the record that both of the following
38 conditions exist:

39 (A) The housing development project would have a specific,
40 adverse impact upon the public health or safety unless the project

1 is disapproved or approved upon the condition that the project be
 2 developed at a lower density. As used in this paragraph, a “specific,
 3 adverse impact” means a significant, quantifiable, direct, and
 4 unavoidable impact, based on objective, identified written public
 5 health or safety standards, policies, or conditions as they existed
 6 on the date the application was deemed complete.

7 (B) There is no feasible method to satisfactorily mitigate or
 8 avoid the adverse impact identified pursuant to paragraph (1), other
 9 than the disapproval of the housing development project or the
 10 approval of the project upon the condition that it be developed at
 11 a lower density.

12 (3) The applicant or any interested person may bring an action
 13 to enforce this subdivision. If a court finds that the local agency
 14 disapproved a project or conditioned its approval in violation of
 15 this subdivision, the court shall issue an order or judgment
 16 compelling compliance within 60 days. The court shall retain
 17 jurisdiction to ensure that its order or judgment is carried out. If
 18 the court determines that its order or judgment has not been carried
 19 out within 60 days, the court may issue further orders to ensure
 20 that the purposes and policies of this subdivision are fulfilled. In
 21 any such action, the city, county, or city and county shall bear the
 22 burden of proof.

23 (4) For purposes of this subdivision, “housing development
 24 project” means a project to construct residential units for which
 25 the project developer provides sufficient legal commitments to the
 26 appropriate local agency to ensure the continued availability and
 27 use of at least 49 percent of the housing units for very low, low-,
 28 and moderate-income households with an affordable housing cost
 29 or affordable rent, as defined in Section 50052.5 or 50053 of the
 30 Health and Safety Code, respectively, for the period required by
 31 the applicable financing.

32 (h) An action to enforce the program actions of the housing
 33 element shall be brought pursuant to Section 1085 of the Code of
 34 Civil Procedure.

35 ~~SECTION 1. Section 65583.2 of the Government Code is~~
 36 ~~amended to read:~~

37 ~~65583.2. (a) A city’s or county’s inventory of land suitable~~
 38 ~~for residential development pursuant to paragraph (3) of~~
 39 ~~subdivision (a) of Section 65583 shall be used to identify sites that~~
 40 ~~can be developed for housing within the planning period and that~~

1 are sufficient to provide for the jurisdiction's share of the regional
2 housing need for all income levels pursuant to Section 65584. As
3 used in this section, "land suitable for residential development"
4 includes all of the following:

- 5 (1) Vacant sites zoned for residential use.
- 6 (2) Vacant sites zoned for nonresidential use that allows
7 residential development.
- 8 (3) Residentially zoned sites that are capable of being developed
9 at a higher density.
- 10 (4) Sites zoned for nonresidential use that can be redeveloped
11 for, and as necessary, rezoned for, residential use.

12 (b) The inventory of land shall include all of the following:

- 13 (1) A listing of properties by parcel number or other unique
14 reference.
- 15 (2) The size of each property listed pursuant to paragraph (1),
16 and the general plan designation and zoning of each property.
- 17 (3) For nonvacant sites, a description of the existing use of each
18 property.
- 19 (4) A general description of any environmental constraints to
20 the development of housing within the jurisdiction, the
21 documentation for which has been made available to the
22 jurisdiction. This information need not be identified on a
23 site-specific basis.
- 24 (5) A general description of existing or planned water, sewer,
25 and other dry utilities supply, including the availability and access
26 to distribution facilities. This information need not be identified
27 on a site-specific basis.
- 28 (6) Sites identified as available for housing for above
29 moderate-income households in areas not served by public sewer
30 systems. This information need not be identified on a site-specific
31 basis.
- 32 (7) A map that shows the location of the sites included in the
33 inventory, such as the land use map from the jurisdiction's general
34 plan for reference purposes only.

35 (c) (1) Based on the information provided in subdivision (b),
36 a city or county shall determine whether each site in the inventory
37 can accommodate some portion of its share of the regional housing
38 need by income level during the planning period, as determined
39 pursuant to Section 65584. The analysis shall determine whether
40 the inventory can provide for a variety of types of housing,

1 including multifamily rental housing, factory-built housing,
2 mobilehomes, housing for agricultural employees, emergency
3 shelters, and transitional housing. The city or county shall
4 determine the number of housing units that can be accommodated
5 on each site as follows:

6 (A) If local law or regulations require the development of a site
7 at a minimum density, the department shall accept the planning
8 agency's calculation of the total housing unit capacity on that site
9 based on the established minimum density. If the city or county
10 does not adopt a law or regulations requiring the development of
11 a site at a minimum density, then it shall demonstrate how the
12 number of units determined for that site pursuant to this subdivision
13 will be accommodated.

14 (B) The number of units calculated pursuant to subparagraph
15 (A) shall be adjusted as necessary, based on the land use controls
16 and site improvement requirements identified in paragraph (5) of
17 subdivision (a) of Section 65583.

18 (2) A city or county shall provide an analysis demonstrating
19 how the adopted densities on the sites designated for lower income
20 housing accommodate the need for housing affordable to lower
21 income households in either of the following ways:

22 (A) The analysis shall be based on substantial evidence and
23 include one or both of the following:

24 (i) An analysis demonstrating the financial feasibility of newly
25 constructing unsubsidized, market-rate housing that is affordable
26 to low-income and very low income households at the adopted
27 densities.

28 (ii) An analysis demonstrating that the total development cost
29 per unit of newly constructing housing affordable to lower income
30 households at the adopted densities does not exceed the total
31 development cost per unit of newly constructing housing affordable
32 to lower income households at the densities specified in
33 subparagraph (B) and that the adopted densities do not reduce the
34 ability of housing developments affordable to lower income
35 households to obtain subsidies to meet all anticipated funding gaps.
36 For the purposes of this subparagraph, "total development cost"
37 shall include, but not be limited to, land, costs of construction,
38 utility extensions, architectural, engineering, and similar
39 professional services, fees imposed by public agencies, taxes, and
40 construction financing costs.

- 1 ~~(B) The following densities shall be deemed appropriate to~~
2 ~~accommodate housing for lower income households:~~
- 3 ~~(i) For incorporated cities within nonmetropolitan counties and~~
4 ~~for nonmetropolitan counties that have micropolitan areas: sites~~
5 ~~allowing at least 15 units per acre.~~
- 6 ~~(ii) For unincorporated areas in all nonmetropolitan counties~~
7 ~~not included in clause (i): sites allowing at least 10 units per acre.~~
- 8 ~~(iii) For suburban jurisdictions: sites allowing at least 20 units~~
9 ~~per acre.~~
- 10 ~~(iv) For jurisdictions in metropolitan counties: sites allowing~~
11 ~~at least 30 units per acre.~~
- 12 ~~(d) For purposes of this section, metropolitan counties,~~
13 ~~nonmetropolitan counties, and nonmetropolitan counties with~~
14 ~~micropolitan areas are as determined by the United States Census~~
15 ~~Bureau. Nonmetropolitan counties with micropolitan areas include~~
16 ~~the following counties: Del Norte, Humboldt, Lake, Mendocino,~~
17 ~~Nevada, Tehama, and Tuolumne and such other counties as may~~
18 ~~be determined by the United States Census Bureau to be~~
19 ~~nonmetropolitan counties with micropolitan areas in the future.~~
- 20 ~~(e) A jurisdiction is considered suburban if the jurisdiction does~~
21 ~~not meet the requirements of clauses (i) and (ii) of subparagraph~~
22 ~~(B) of paragraph (2) of subdivision (e) and is located in a~~
23 ~~Metropolitan Statistical Area (MSA) of less than 2,000,000 in~~
24 ~~population, unless that jurisdiction's population is greater than~~
25 ~~100,000, in which case it is considered metropolitan. Counties,~~
26 ~~not including the City and County of San Francisco, will be~~
27 ~~considered suburban unless they are in a MSA of 2,000,000 or~~
28 ~~greater in population in which case they are considered~~
29 ~~metropolitan.~~
- 30 ~~(f) A jurisdiction is considered metropolitan if the jurisdiction~~
31 ~~does not meet the requirements for "suburban area" above and is~~
32 ~~located in a MSA of 2,000,000 or greater in population, unless~~
33 ~~that jurisdiction's population is less than 25,000 in which case it~~
34 ~~is considered suburban.~~
- 35 ~~(g) For sites described in paragraph (3) of subdivision (b), the~~
36 ~~city or county shall specify the additional development potential~~
37 ~~for each site within the planning period and shall provide an~~
38 ~~explanation of the methodology used to determine the development~~
39 ~~potential. The methodology shall consider factors including the~~
40 ~~extent to which existing uses may constitute an impediment to~~

1 additional residential development, development trends, market
2 conditions, and regulatory or other incentives or standards to
3 encourage additional residential development on these sites.

4 (h) The program required by subparagraph (A) of paragraph (1)
5 of subdivision (c) of Section 65583 shall accommodate 100 percent
6 of the need for housing for very low and low-income households
7 allocated pursuant to Section 65584 for which site capacity has
8 not been identified in the inventory of sites pursuant to paragraph
9 (3) of subdivision (a) on sites that shall be zoned to permit
10 owner-occupied and rental multifamily residential use by right
11 during the planning period. These sites shall be zoned with
12 minimum density and development standards that permit at least
13 16 units per site at a density of at least 16 units per acre in
14 jurisdictions described in clause (i) of subparagraph (B) of
15 paragraph (2) of subdivision (c) and at least 20 units per acre in
16 jurisdictions described in clauses (iii) and (iv) of subparagraph (B)
17 of paragraph (2) of subdivision (c). At least 50 percent of the very
18 low and low-income housing need shall be accommodated on sites
19 designated for residential use and for which nonresidential uses
20 or mixed uses are not permitted.

21 (i) For purposes of this section and Section 65583, the phrase
22 “use by right” shall mean that the local government’s review of
23 the owner-occupied or multifamily residential use may not require
24 a conditional use permit, planned unit development permit, or other
25 discretionary local government review or approval that would
26 constitute a “project” for purposes of Division 13 (commencing
27 with Section 21000) of the Public Resources Code. Any subdivision
28 of the sites shall be subject to all laws, including, but not limited
29 to, the local government ordinance implementing the Subdivision
30 Map Act. A local ordinance may provide that “use by right” does
31 not exempt the use from design review. However, that design
32 review shall not constitute a “project” for purposes of Division 13
33 (commencing with Section 21000) of the Public Resources Code.
34 Use by right for all rental multifamily residential housing shall be
35 provided in accordance with subdivision (f) of Section 65589.5.

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